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ARIZONA CORPORATION COMMISSION
OFFICE OF CHAIRWOMAN LEA MÁRQUEZ PETERSON

August 3, 2021

RE: In the Matter of the Application of Arizona Public Service Company for Approval of Its 2022 Renewable Energy Standard Implementation Plan for Reset of Renewable Energy Adjustor (Docket No. E-01345A-21-0240)

My Fellow Commissioners, Staff, and All Interested Parties:

In 2006, the Arizona Corporation Commission ("Commission") adopted the Renewable Energy Standard ("RES")¹ to advance clean energy objectives at a time when, due to high costs and intermittency, utilities were not making significant investments in renewable energy resources without substantial government intervention. In conjunction with the RES mandates, the Commission created and authorized an additional surcharge on customers' bills (the RES surcharge) so utilities could automatically pass-through to ratepayers the above-market costs associated with complying with the new rules.² In order to ensure that utilities would not take advantage of the RES surcharge and ratepayers, the Commission also adopted a waiver provision,³ which could be utilized in the event that the cost of the renewable energy investments and power purchase agreements ("PPA") that utilities would execute in order to comply with the Commission's mandates ever became an issue. With sufficient oversight and the protection afforded by the Commission's waiver provision, concerned ratepayers believed that they would be protected and that the utilities would be held accountable to the ratepayers for high or unreasonable costs. In addition, stakeholders believed the mandates would usher in a new opportunity for the renewable energy industry and allow a broad spectrum of renewable energy providers to participate in our state's growing energy economy.

As a consumer advocate and champion for ratepayers and the small business community, I support proactive utility investments and PPAs in clean and renewable energy resources when they are reliable and cost-effective for Arizona's ratepayers. During my tenure at the Commission, however, I have heard many stakeholders, including several outspoken commissioners and members of the public, express concerns that Arizona Public Service Company ("APS") may be overcharging customers. I have also heard concerns that APS has not adopted enough renewable energy in comparison to the amount of RES surcharges it has spent, and that too few renewable energy providers have been able to participate in meeting Arizona's energy needs. As Chairwoman, I believe the public has a right to be assured that APS's investments and PPAs have been reasonable and prudent⁴ and to know whether the bulk of the surcharge dollars have been benefitting too few renewable energy providers to the detriment of other, potentially more competitive and cost-effective renewable energy stakeholders across the state.

Because the Commission's RES rules and waiver provisions require primarily that APS purchase or generate renewable energy credits ("RECs") and retire them at a reasonable and prudent cost to ratepayers,⁵ I have concerns regarding a 30-year above-market priced PPA with Solar One, LLC for the procurement of renewable energy from Solana Generating Station at a price of over four times the average levelized cost of power in 2020 ("Solana PPA").⁶ Due to the high price associated with the Solana PPA, I question whether it was (and continues to be) a competitive and cost-effective solution to meeting the Commission's clean and renewable energy objectives.

¹ See Decision No. 69127 (Nov. 14, 2006), <https://docket.images.azcc.gov/0000063561.pdf?i=1627936457088>.

² See Decision No. 70313 (Apr. 28, 2008) (approving APS's RES surcharge), <https://docket.images.azcc.gov/0000084405.pdf?i=1627936399922>.

³ See Ariz. Admin. Code § R14-2-1816(A) and (B).

⁴ See *Correspondence from Chairwoman Lea Márquez Peterson*, page 2 (Jul. 2, 2021), <https://docket.images.azcc.gov/E000014459.pdf?i=1626975554292>.

⁵ See Ariz. Admin. Code § R14-2-1804(A), § R14-2-1803(A) & (C); § R14-2-1808(A); and § R14-2-1813(B)(4).

⁶ See *Response from Abhay Padgaonkar to Chairwoman Lea Márquez Peterson* (Jul. 12, 2021), <https://docket.images.azcc.gov/E000014613.pdf?i=1626975554292>.



From my review of the Commission's past RES decisions, the Commission and its Utilities Division ("Staff") have never granted or recommended a waiver of the Commission's overall RES mandates to protect ratepayers from the above-market costs associated with the Solana PPA or any other renewable energy PPA. In addition, the Commission and Staff have never denied a portion of APS's proposed RES budget or surcharge that APS has claimed was necessary to comply with the Commission's mandates, nor has the Commission or Staff sent APS's proposed RES budget or surcharge to an evidentiary hearing to determine whether they or the above-market costs associated with them are reasonable and prudent.

As a result, I am concerned that, over the last 15 years, some commissioners and Staff⁷ may have relinquished their roles as utility regulators and given too much faith to the Commission's mandates to hold utilities accountable.⁸ If the Commission has never conducted a detailed prudency review, then it would be impossible for the Commission and Staff today to discern whether APS could have "complied" with the Commission's mandates over the last 15 years at a lower cost to consumers, absent the initiation of an evidentiary hearing in APS's current RES cycle. If true, then it would also be reasonable for members of the public to be skeptical about whether the Commission and Staff would utilize and enforce their waiver provisions in the future to protect ratepayers, should the cost of compliance ever become an issue under future mandates the Commission adopts.

I believe the time is long overdue for addressing the Commission's current RES mandates and waiver provisions. To alleviate these concerns, the public needs assurances from the Commission that if costs have become an issue today, the Commission has taken steps to mitigate them. To alleviate these concerns, I believe the Commission should utilize the current provisions it has in place and exercise its authority to conduct an evidentiary hearing on the pending RES Implementation Plan and proposed budget and surcharge.⁹

Conducting a detailed cost analysis and prudency review today, as the Commission's existing RES rules allow,¹⁰ would give the Commission and Staff an opportunity to confirm whether APS's decision to execute the Solana PPA was reasonable and prudent. In addition, because consumer advocates disagree with APS about whether the costs associated with the Solana PPA were incurred in furtherance of APS's compliance with the Commission's mandates, it would also give each side an opportunity to present their claims—and give the Commission an opportunity to assure the public that the Commission's mandates and unutilized waiver provisions were not responsible in any way for APS's alleged overcharging. This would provide commissioners and Staff an opportunity to demonstrate they are committed to protecting ratepayers, as well as to advancing cleaner and more renewable energy resources.

Thus, based on my review of APS's 2022 RES filings made on July 1¹¹ and 8,¹² 2021, the public comments filed on July 12¹³ and 21,¹⁴ and the Arizona Administrative Code ("A.A.C."), I would like Staff to be prepared to address at the Commission's next Regular Open Meeting on August 17-18, 2021 ("August Open Meeting"), whether Staff believes the RES budgets, surcharges, and renewable energy PPAs included in APS's 2022 RES Implementation Plan, including the Solana PPA, should be sent to an evidentiary hearing for a detailed cost and prudency review.

⁷ See, e.g., *Miscellaneous Comments from Abhay Padgaonkar* (Jul. 30, 2021), <https://docket.images.azcc.gov/E000014870.pdf?i=1627931077803>.

⁸ See, e.g., *Letter of Dissent from Chairwoman Lea Márquez Peterson* (Jun. 16, 2021), <https://docket.images.azcc.gov/E000014057.pdf?i=1627056467995>.

⁹ See Ariz. Admin. Code § R14-2-1813(C) and § R14-2-1812(C).

¹⁰ See *id.*

¹¹ See *APS's Compliance Filing & 2021 RES Implementation Plan* (Jun. 26, 2021), <https://docket.images.azcc.gov/E000007312.pdf?i=1626890900947>.

¹² See *Response from APS to Chairwoman Lea Márquez Peterson's Letter* (Jul. 8, 2021), <https://docket.images.azcc.gov/E000014563.pdf?i=1626975554292>.

¹³ See *Response from Abhay Padgaonkar to Chairwoman Lea Márquez Peterson's Letter*, *supra*, note 4.

¹⁴ *Miscellaneous Comments from Abhay Padgaonkar* (Jul. 21, 2021), <https://docket.images.azcc.gov/E000014777.pdf?i=1626975554292>.



Through the hearing process, the Commission should, at a minimum, determine the following:

1. Discern whether the above-market costs associated with the Solana PPA are reasonable and prudent.
2. Confirm whether the above-market costs associated with the Solana PPA were incurred specifically for the purpose of purchasing or generating RECs for APS to "comply" with the Commission's RES mandates under A.A.C. § R14-2-1804(A).
3. If the costs are not reasonable and prudent and were incurred for APS to comply with the Commission's mandates, then whether the Commission should grant a waiver pursuant to A.A.C. § R14-2-1816(A).
4. If the costs are not reasonable and prudent but were not incurred for APS to comply with the mandates, then what actions, if any, the Commission should take regarding APS's 2022 RES budget and surcharge.

If the cost of any one of APS's renewable energy PPAs is an issue today, then the Commission must demonstrate that it has not relinquished its role and allowed mandates to serve as a substitute for the Commission's oversight. If the Commission means what it says regarding the efficacy of mandates and waiver provisions in protecting ratepayers, then it should demonstrate it.

At the August Open Meeting, I ask APS and all interested stakeholders to be prepared to comment on Staff's recommendation whether to proceed with an evidentiary hearing and on the broader issue of APS's renewable energy PPAs and proposed 2022 RES budget and surcharge. I look forward to the Commission's discussion and potential vote on this matter at the August Open Meeting.

Sincerely,

A handwritten signature in blue ink that reads "Lea Márquez Peterson".

Lea Márquez Peterson
Chairwoman

